

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HANWHA SOLUTIONS CORPORATION,
Petitioner

v.

MAXEON SOLAR PTE. LTD.,
Patent Owner

Case IPR2024-01198
U.S. Patent No. 11,251,315

**PATENT OWNER'S REPLY TO OPPOSITION
TO MOTION TO EXCLUDE EVIDENCE**

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I. INTRODUCTION

Petitioner largely ignores the deficiencies that were highlighted in Patent Owner's Motion to Exclude. The exhibits should therefore be excluded for the reasons stated in Patent Owner's motion. Further, even the limited arguments that Petitioner does make are unavailing, as explained below.

II. ARGUMENT

A. Petitioner's "evidence of what they describe" Arguments Are Unavailing

Petitioner does not bypass the rule prohibiting hearsay when it alleges that the challenged exhibits are "evidence of what they describe." Although Petitioner repeatedly uses that expression, Opp. at 5, 6, 10, 14, Petitioner fails to explain what it means and how it is any different than the prohibited purpose of as "evidence to prove the truth of the matter asserted." FED. R. EVID. 801(c)(2). Petitioner offers no authority that recognizes a use of as "evidence of what they describe" or anything similar. Regardless, if the Board does not exclude the exhibits that are challenged on hearsay grounds, then Petitioner's briefing and forthcoming oral arguments should not be understood as citing those exhibits as support for the truth of the matter asserted in those exhibits.

B. Petitioner's "corroboration" Arguments Are Unavailing

The Federal Rules of Evidence apply equally to all proffered evidence. 37 C.F.R. § 42.62(a). Petitioner repeatedly asks the Board to overlook the evidentiary

shortcomings of the challenged exhibits because those exhibits allegedly

“corroborate” other evidence. *E.g.*, Opp. at 5-6, 7, 10, 12-13, 15. That provides no solace for Petitioner. Evidentiary shortcomings cannot be overlooked simply because a party deems the evidence as “corroborating.” If Petitioner desired to buttress Dr. Holman’s opinions or other exhibits with corroborating evidence, it should have developed *admissible* evidence to do so.

C. Dr. Holman’s Reliance on Inadmissible Evidence Does Not Aid Petitioner

Inadmissible evidence does not become admissible because a party’s expert relies on it in forming their opinions. Petitioner, invoking Rule 703, states that Dr. Holman was permitted to rely on inadmissible evidence in forming his opinions. Opp. 5, 6, 12. There are two problems with that argument. *First*, Rule 703 permits an expert to rely on inadmissible evidence only “[i]f experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject.” FED. R. EVID. 703. Petitioner fails to make that showing. For example, Petitioner fails to respond to Patent Owner’s observation that “Petitioner has not come forward with any evidence that experts in the field rely upon websites uncovered via a Google search authored by organizations they have never heard of.” Mtn., p. 9. *Second*, even if Dr. Holman was permitted to rely on inadmissible evidence, that does not remove the evidentiary shortcomings of the underlying exhibits.

**D. Mr. Smolenski's Declarations Do Not Authenticate the
Challenged Exhibits**

The challenged exhibits are not authenticated by the testimony of a lay witness who lacks personal knowledge. Petitioner relies heavily on Mr. Smolenski's declarations to authenticate certain exhibits. Opp, p. 4, 6, 8. The Board should not credit Mr. Smolenski's declarations because they fail to provide any foundation as to how he allegedly has personal knowledge of the relevant facts. For example, Mr. Smolenski states that Exhibit 1018 "was presented to The Division of Mathematics and Natural Sciences at Reed College." Ex. 1140, ¶ 4. However, Mr. Smolenski's declaration is silent with respect to how he allegedly has such knowledge. Indeed, it is unclear whether Mr. Smolenski even claims to have personal knowledge of the statements in his declarations. He concludes both by stating that "all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true." Ex. 1140, ¶ 49; Ex. 1141, ¶ 38. Mr. Smolenski fails to segregate which facts he claims to know and which he only "believes" to be true, much less the basis for that belief. *See United States v. Perkins*, 470 F.3d 150, 156 (4th Cir. 2006) ("Under the Federal Rules of Evidence, speculative opinion testimony by lay witnesses—i.e., testimony not based upon the witness' perception—is generally considered inadmissible.").

The deficiencies of Mr. Smolenski's declarations are apparent on their face. Petitioner notes that Patent Owner did not depose Mr. Smolenski. Opp, p. 13.

However, Petitioner was obliged to provide competent declaration testimony with proper foundation. Petitioner should not have hoped Mr. Smolenski would attempt to remedy his deficient declarations during a deposition.

E. The Residual Hearsay Exception Does Not Apply

Petitioner is not able to rely on the residual hearsay exception. One of the conditions for that exception is that “the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement.” FED. R. EVID. 807(a)(1). Petitioner does not make any such showing. Instead, Petitioner cites only another requirement of the exception—that of the next subpart. Opp. at 7. Perhaps, Petitioner believes the two subsections of Rule 807(a) are alternatives, and that satisfaction of either is sufficient. That is incorrect—both showings are required.

F. Petitioner Fails to Explain the Relevancy of Non-Prior Art

In view of the dearth of evidence regarding public accessibility, Petitioner frequently relies on a fallback argument that exhibits do not qualify as prior art are nevertheless relevant. Opp. at 4, 5-6, 13. Petitioner fails to explain how. Specifically, because the exhibits have not been shown to have been available to a POSITA at the relevant time, the exhibits reflect, at best, only what the authors of those exhibits believed, not what a POSITA would have known. In this regard,

Yeda Research v. Mylan Pharms. Inc., 906 F.3d 1031 (Fed. Cir. 2018) is inapposite.

In that case, a reference that was not prior art nevertheless provided evidence of a motivation of a POSITA to explore less frequent dosing regimens as of the priority date. In this case, by contrast, Petitioner fails to explain how the exhibits, which are not accessible to a POSITA, reflect anything bearing on the grounds presented in the Petition. *Yeda* did not hold that all non-prior art is relevant.

G. Petitioner Relies on Dates For the Truth of Those Dates

Petitioner inexplicably insists that it does not rely on dates on the exhibits to prove the date on which the exhibits were created. As established by *Hilgraeve, Inc. v. Symantex Corp.*, 271 F. Supp. 2d 964, 974 (E.D. Mich. 2003), when a date on a document is relied upon to prove when the document was created, that is hearsay. Tellingly, Petitioner fails to address that case.

H. Petitioner Remedied the Deficiency in Exhibit 1090

In view of the filing of Exhibit 1142, Patent Owner withdraws its objection to Exhibit 1090.

III. CONCLUSION

The Board should exclude all challenged exhibits.

Respectfully submitted,

Date: November 20, 2025

/Jacob A. Snodgrass/

Jacob A. Snodgrass (Reg. No. 66,032)

CERTIFICATE OF SERVICE

I certify that the foregoing Patent Owner's Reply to Opposition to Motion to Exclude Evidence was served on Petitioner's counsel of record by electronic notification through P-TACTS and email to:

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